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I. LAND AND PEOPLE

1. The Republic of Poland is a State in Central Europe on the Baltic Sea. It borders the Russian Federation, Lithuania, Belarus, Ukraine, Slovakia, the Czech Republic and Germany. The length of its frontier is 3,582 km, including a 528 km maritime border and 1,285 km of borders along rivers. In area it is 312,685 km^2, the ninth largest country in Europe.

2. The population is 38.7 million. The official language is Polish. The monetary unit is the zloty (PLN).

3. The national holidays are 3 May - Constitution Day (commemorating the promulgation of the Constitution of 1791) and 11 November - Independence Day (commemorating the regaining of independence in 1918).

4. The country is divided administratively into 16 voivodships (regions).

5. The State emblem is the image of a white eagle wearing a crown with its head turned to the right with gold beak and talons, set against a red rectangular shield tapering to a point at the bottom. The national colours are white and red in two horizontal parallel bands, of which the top is white and the bottom is red.

6. Poland is a lowland country: areas not exceeding 300 metres above sea level account for 91.3 per cent of its area (depressions constitute 0.2 per cent); the average altitude is 173 m (Europe - 330 m). The highest point is Mount Rysy in the High Tatras (2,499 m), the lowest 1.8 m below sea level. Poland's surface is inclined from the south to the north-east.

7. Poland is rich in natural resources. More than 70 different minerals are mined, 40 of them of key importance to the economy (hard coal accounts for 40 per cent, sand and gravel 35 per cent, and lignite and limestone 8 per cent each). Hard coal is the most important fuel, and lignite is also important. Of the chemicals raw sulphur and rock salt play a basic role, and of the metals copper, zinc and lead are the most abundant deposits in Poland.

8. Poland's climate is marked by rapid weather changes and great variability of the seasons in successive years. Through Poland runs the border separating the warm and rainy temperate climate from the boreal, snow and forest climate (according to the Koppen-Geiger classification). Owing to Poland's physical traits and geographic location, various air masses interact above it, influencing its weather and, as a result, its climate.

9. At present Poland is an ethnically rather homogenous country. The size of national minorities is estimated at between 850,000 and 970,000 (from 2.2 to 2.5 per cent of the total population). The biggest national minorities are Germans, Ukrainians and Belarusians. Other minorities are Lithuanians, Slovaks, Jews, Gypsies, Greeks, Macedonians, Russians and Tartars. The natural increment (per 1,000 population) has been systematically declining. It dropped from 4.1 in 1990 to 0.9 in 1997. From January to August 1998 it amounted to 1 as compared with 1.2 in the same period of 1997. Since 1992 the

average life expectancy of men and women in Poland has been systematically, albeit very slowly, increasing. In 1997 it was 77 years for women and 68.5 for men.

10. Considerable progress has been made in combating infant mortality. The number of infant deaths per 1,000 live births dropped from 19.3 in 1990 to 10.2 in 1997.

II. THE ECONOMY

11. Poland's economic transition began with the establishment of the first non-communist Government in September 1989. In the beginning of 1990 the introduction of radical reforms was the precondition of Poland's survival. The early reformers inherited a completely dysfunctional and obsolete economic system, with near hyperinflation and a huge foreign debt. The "shock therapy" designed and applied by the then Deputy Prime Minister Leszek Balcerowicz envisaged dismantling all central economic planning mechanisms and the introduction of a market economy as soon as possible. The economic programme provided for concurrent policies of stabilization, liberalization and profound institutional restructuring. It has gained unparalleled public support, which made it possible to take difficult decisions resulting in heavy, but unavoidable, social costs, including open unemployment and a decline in real wages. Successive Polish Governments, although representing different political options, had never questioned the fundamental principles of the reforms, initiated in 1990. Over the past eight years the Polish economy has effectively switched from a command and distribution, State-owned system to a free market economy with its characteristic institutions and dominant private ownership, open to trade, investment and competition.

12. The reform programme could not spare Poland from a severe recession in the early 1990s, with sharp declines in industrial production and increases in unemployment rates. In 1992, the economy began a strong recovery. Inflation and unemployment rates stabilized and began to decrease steadily, while growth rates were in the 2.6 per cent range.

13. In 1998, following three years of high, balanced development at a level of 6-7 per cent a year, the growth rate has begun to weaken. In 1998 the GDP growth amounted to 4.8 per cent and was slower than in 1997 (6.8 per cent). Despite its slower growth rate, Poland remains one of the most rapidly developing countries, a leader among the States of Central and Eastern Europe. In 1992, the first year in the initial transformation phase in which growth was recorded, the per capita GDP (according to buying-power parity) came to $4,697 in Poland, and by 1998 it had grown to some $7,600. In 1993 the GDP growth of 3.8 per cent was the highest growth rate in Europe. After achieving 5.2 per cent in 1994, GDP growth ended the following year at 7 per cent. In 1996, GDP growth amounted to 6 per cent, in 1997 to 6.8 per cent.

14. The country's economic growth has brought about the desired qualitative and structural changes in the economy. Productivity is increasing and energy-consuming and material-consuming production are declining, improving competitiveness, although not nearly enough.

15. Progress has been achieved in privatization in all areas of the economy. In 1997 the private sector employed nearly 70 per cent of the country's total work force and produced 58.7 per cent of GDP. Agriculture, retail trade and building were nearly entirely in private hands. The private sector accounted for 74.3 per cent (in 1998 - 78 per cent) of exports and 82.5 per cent (in 1998 - 86 per cent) of imports. It was relatively weaker in industry (64.2 per cent).

16. A most favourable development was the dynamic growth of small and medium-sized businesses, whose number nearly quintupled from 1992 to 1996. They now employ some 55 per cent of those employed in the national economy and produce more than 40 per cent of the GDP.

17. Among the most important processes that will have a positive impact on Poland's economy in future is the high growth of investment spending (averaging 20 per cent in the period 1995-1998) - three times greater than the GDP. The assortment structure, namely the significant share of industrial machinery and equipment, together with the rapid rate of investment in the most advanced manufacturing fields, is helping to modernize the economy and making it more competitive.

18. A sore spot of the Polish economy, despite some improvement, remains the situation in the foreign-trade sector. Following a large, balanced growth in trade in 1995, the years 1996-1997 witnessed a slow-down in the average annual export growth rate (in terms of goods volume) to 6 per cent, with the import level hovering round the 20 per cent level. In 1998, the disproportion between export and import growth rates declined considerably (export growth was estimated at 10 per cent and imports at 14 per cent), but a serious foreign-trade deficit remains. The current account deficit in relation to GDP will grow to 4.5 per cent in 1998 (1996 - 1 per cent, 1997 - 3.1 per cent). Only to a certain extent can that deficit be linked to the situation in countries that are Poland's main trading partners. Essentially it is of a structural nature stemming from the continued relatively low international competitiveness of Polish export goods. Goods that are not highly processed comprise 35-40 per cent of Poland's exports, and those are the most affected by changing business climates and market access. The persistence of a relatively high current account deficit can be regarded as a normal phenomenon in a rapidly growing economy undergoing modernization.

19. An important factor of economic growth - apart from investment and exports - remains consumer demand (despite its slower rate), which is fostered by a real increase in household incomes as well as by declining unemployment and inflation. The result is an improvement in society's living conditions. Unemployment is declining more slowly than in the period 1995-1997, but more swiftly than expected. In 1998, the unemployment rate came to 9.6 per cent. Inflationary pressure has been systematically weakening. Inflation in 1998 was 8.9 per cent as against the forecast 9.7 per cent.

20. An important aim of the reforms from the very outset has been to open the Polish economy and reintegrate it with the world economy. This has been accomplished through abolishing trade monopolies, progressive liberalization of Polish trading practices, entering into multilateral trade agreements with the European Union (EU), the European Free Trade Association (EFTA) and the

Central European Free Trade Association (CEFTA) in 1992-1993, membership of the World Trade Organization (WTO) since 1995, full participation in the Uruguay Round and subsequent consistent implementation of its results. In 1990 full internal convertibility of the zloty was introduced and a new, more realistic exchange rate was set. In 1996 Poland was admitted into the Organisation for Economic Cooperation and Development (OECD). Poland's most important, top-priority strategic choice in the political and economic realm is accession to the European Union. In 1991, Poland signed an agreement on association with the European Communities and in April 1994 an official application was submitted for membership of the Union.

21. In the near future, the main economic challenges for Poland concern: (i) maintaining macroeconomic stability, (ii) further improving the budget situation, (iii) accelerating economic, administrative and institutional reform with a view to the preparation for membership of the EU. After the parliamentary elections in September 1997, a new coalition was formed by two parties rooted in the Solidarity movement: the Solidarity Election Action (AWS) and the Freedom Union (UW). The new Government committed itself firmly to an ambitious programme of important reforms and objectives: reform of the social security system, health care and education, and, furthermore, decentralization of the State, privatization, lower taxation and, at the same time, further reduction of the budget deficit.

III. THE REFORMS

22. The coming years will be of great significance for Poland. Poland has a real chance of finally overcoming the heritage of injustice that accompanied its forcible inclusion in the Soviet bloc. Europe stands a chance to become more secure, richer and stronger thanks to accelerated political, economic and social cooperation. In order to take advantage of these opportunities, both Poland and Europe should be properly prepared for collaboration. Poland has accepted that challenge. The systemic reforms, currently being implemented, will help Poland become a modern State, capable of utilizing effectively its economic, social and political potential. They will help transform Poland into a democratic State, whose public and private values belong to a shared European civilization. The reforms will equip the Polish State for the global economic, political, and cultural challenges of the twenty-first century.

A. Administrative reform

23. Poland wants to secure its role in the European system of cooperation through improving the efficiency of its State structures. Poland's place in the European Union will largely be determined by the effective utilization of its citizens' talents and by the ability of local and regional communities to successfully exploit their development opportunities.

24. The new State will be the common property of its citizens and will be designed to serve them. The State will support activities that enrich the public interest and will consider the expression of that interest as its highest goal. This is why the essence of the reform lies in introducing new levels of local government - two new levels of self-government - and in reducing significantly the central Government's administrative presence at the subnational level. The State has decentralized competencies and finances in

favour of some 350 democratically elected local governments at the poviat (district) level. The reform also radically reduces the number of voivodships from 49 to 16. These new regional jurisdictions are controlled in part by voivods appointed by the central Government, and in part by newly created, and democratically elected, regional assemblies (Sejmiks). The self-governing voivodship Sejmiks are responsible for the development and implementation of regional economic policies and, like poviats, have independent legal identities and independent budgets. As a result, the reform will significantly decentralize both public authority and public finances. Moreover, a new law on public finances will make the budgets of all public-sector entities more transparent and accountable. These new levels of government will bring people closer to, and make them more responsible for the conduct and development of their communities. The self-governing poviat, together with the already existing self-governing gmina (commune), will allow citizens to shape and control the public institutions and policies closest to their daily lives. The delegation of authority over local affairs to local communities will also make it possible for non-governmental organizations to play a greater role in the realization of public services and in the enrichment of civil society.

25. Through decentralization, many of the responsibilities of the national State will be assigned to lower levels of self-government. Local governments will not be subordinated to the State and will operate freely and independently, subject only to the State's legal review. Democratically elected representatives at the gmina, poviat and self-governing voivodship levels will be fully responsible for the functions that have been assigned to them. Through deconcentration, the national State will place other responsibilities in the hands of its territorial representatives at the voivodship level, or delegate them to gminas, or self-governing voivodship bodies so that functions still within the purview of the national State can nonetheless be carried out more effectively by governments closer to the citizenry.

26. One of the most crucial elements of the reform is decentralization of public finances. The share of budgetary funds controlled directly by the central Government will decline from 75 per cent to about 50 per cent. Local self-governments will have at their disposal about 36 per cent of public funds with the rest being placed at the disposal of regional health insurance funds, which will be controlled by voivodship Sejmiks. The primary objectives of public finance reform are to:

- guarantee the financial independence of local self-governments;
- guarantee that revenues are sufficient for the tasks and powers of all levels of public administration;
- provide rules and procedures which will permit the utilization of EU structural funds;
- increase the transparency and accountability of public expenditures.

27. Systematic reform in Poland will involve not only reshaping local and regional structures of public administration, but also reshaping the central Government itself. As a result of the reform, the Government will no longer have to administer or execute tasks of a local or regional character. The central State will be able to focus on the real tasks of modern democratic governance, such as improving the overall rule of law and ensuring the nation's balanced development. The reforms will also help the central Government act as an efficient guarantor and enforcer of EU policy, as well as increase its reliability as a partner in bilateral relations.

B. Social reform

28. From 1 January 1999, Poland has begun implementing two major social reforms: the reform of the health-care system and social security reform.

Health-care reform

29. Health care is a field of public endeavour that must satisfy the immense needs and expectations of all citizens. Limited financial resources lead to a situation in which even the most affluent societies are incapable of covering the costs of all those needs. The cornerstone of the health-care reform being implemented in Poland since 1 January 1999 is the elimination of the State budget's direct financing of the health service. The tasks of the new system are to be carried out by health insurance institutions known by the traditional pre-Second World War name of Sick Funds. Sixteen fully independent and self-managing funds, whose activities are delimited by the boundaries of the new voivodships, are being set up, as is one nationwide fund for the uniformed services. Their task will be to effectively manage resources derived from their members' contributions in the amount of 7.5 per cent of personal incomes. The contribution will be deducted in its entirety from the income tax advance paid by private citizens. The Sick Funds are to be autonomous institutions both organizationally and financially, and their main purpose will be to provide the best possible medical care, as far as their budget will permit, to all insured persons in their area of competence.

Social-security reform

30. On 13 October 1998 the Sejm of the Republic of Poland adopted a law on the social security system. The law has thoroughly restructured the existing social-security system. It encompasses the following forms of social insurance: old age pensions, disability pensions, sick benefits and benefits connected with maternity as well as on-the-job accidents and occupational diseases. In that realm, the law has adopted solutions similar to those in force in countries belonging to the European Union. The first stage of the reform comprises retirement insurance. Under the new system, the amount of an old-age pension will depend on the amount of money actually contributed by a wage-earner and on the period over which the contributions were made. It will be up to the insured to decide when to retire (only a minimum retirement age has been specified). In addition, dividing the obligation to make social-security contributions between the employer and the insured generates the hope that the insured will take a greater interest in his/her own future.

IV. THE POLITICAL SYSTEM

31. In the Republic of Poland, the Constitution is the supreme law of the land. Its provisions are applied directly unless otherwise stipulated (art. 8). The fundamental principle governing the State is expressed in article 10 which states that, "the political system of the Republic of Poland is based on a division and balance of legislative authority, executive authority and judicial authority. Legislative authority is exercised by the Sejm and Senate, executive authority - by the President and the Council of Ministers (Government), and judicial authority - by courts and tribunals."

A. Legislative authority

32. The competence of the Sejm, as stipulated by constitutional regulations, may be divided into:

- legislative (the Sejm passes laws and adopts resolutions);
- elective (it designates the State Tribunal and Constitutional Tribunal and adopts resolutions on confidence in the Government designated by the President);
- supervisory (the Sejm oversees the Council of Ministers' activities to the extent specified by the Constitution and separate legislation; that includes reviewing government reports on implementation of the State budget and designating investigative commissions);
- political and constitutional (adopting no-confidence resolutions vis-à-vis the Government or its individual ministers, lodging complaints with the State Tribunal against government officials, voting together with the Senate as the National Assembly to indict the President before the State Tribunal).

33. Other prerogatives of the Sejm include deciding on a state of war or concluding peace. The competence of the Senate mainly revolves round enacting laws and adopting resolutions. The new Constitution has not delegated any supervisory powers to the Senate.

B. Executive authority

34. Executive authority is exercised by the President and the Council of Ministers. Article 126 of the Constitution states: "The President of the Republic of Poland is the supreme representative of the Republic and the guarantor of the continuity of State authority. He watches over adherence to the Constitution and guards the sovereignty and security of the State as well as the integrity of its territory."

35. The new Constitution of the Republic of Poland highlights the following presidential powers:

- powers delimiting the tasks of the Head of State in internal and external affairs, in his command of the armed forces and in the defence and security of the State in times of peace and war;

- the authority to balance powers with regard to the Sejm and Senate, the Government and the judiciary;

- creative and organizational authority in the area of State leadership.

36. The President first and foremost: ratifies and renounces international agreements (before their ratification he has the right to consult the Constitutional Tribunal over their conformity with the Constitution); appoints and recalls plenipotentiary representatives of Poland to other States and international organizations, receives the credentials and letters of recall of accredited diplomatic representatives of other States; cooperates with the Prime Minister and the appropriate minister in formulating foreign policy; serves as the supreme commander of the armed forces; grants pardons; grants Polish citizenship and consents to the renunciation of that citizenship; issues official acts (decrees and orders which - unless otherwise stipulated by the Constitution - require the signature of the Prime Minister to be valid); upon a motion by the Prime Minister effects personnel changes in the Government; announces elections to the Sejm and Senate; enjoys legislative initiative; signs bills into law; submits motions to the Constitutional Tribunal and - for the purpose of carrying out audits - to the Supreme Auditing Chamber; designates and appoints the Prime Minister and accepts his resignation; accepts the resignation of the Cabinet; recalls ministers on whom the Sejm has passed a no-confidence vote; upon a motion by the National Judiciary Council appoints the Chief Justice and other judges of the Supreme Court, the head of the Supreme Administrative Court and his deputies and appoints the President of the Constitutional Tribunal.

37. The President is elected to a five-year term (and may be re-elected only once) by popular vote in equal, direct and secret balloting.

38. For a violation of the Constitution or the law or the commission of a crime, the President may be held accountable by the State Tribunal.

39. The Council of Ministers (Government) is the supreme executive and managing organ of State authority. It is accountable for its activities and submits reports thereon to the Sejm or - between parliamentary terms - to the President. The main prerogatives of the Government include harmonizing, managing and giving direction to the activities of ministries and other subordinate organs. On the basis of legislation and for the purpose of its implementation the Government issues executive orders, adopts resolutions and ensures that they are carried out. The Government also exercises general leadership in the realm of foreign relations, in the organization of the armed forces and national defence; it concludes international treaties requiring ratification and directs the activities of local organs of government administration. Institutions supervising the activities of chief organs of

authority are: the Constitutional Tribunal (which rules on the conformity with the Constitution of laws and other legal acts of supreme State organs), the State Tribunal (which rules on the culpability of high-ranking State officials for violations of the Constitution and the law), the Supreme Auditing Chamber (which oversees the economic, financial and organizational-administrative activities of State administrative organs and enterprises subordinate thereto with regard to their legality, proper management, usefulness and reliability) and the Ombudsman, the guardian of civil rights and liberties.

C. Judicial authority

40. The structure and organization of the judiciary in Poland is specified in the Constitution of the Republic and in the statute on common law courts. As laid down in the Constitution, and in conformity with the tripartite nature of the power system, law courts and tribunals, forming a separate component of the power system, are independent of the two remaining components ("branches of power"). The courts and tribunals pass judgements in the name of the Republic of Poland.

41. The administration of justice in Poland is implemented by the Supreme Court, common courts, administrative courts, and military courts. Common courts administer justice in all matters save those statutorily reserved for other courts.

42. A judge is appointed for an indefinite period by the President of the Republic on the motion of the National Council of the Judiciary. Prerequisites of appointment are: Polish citizenship, an unimpeachable reputation, a degree in Law, completed apprenticeship in a court or prosecutor's office (which takes two and a half years), a passed examination for judge or public prosecutor, employment as associate judge or prosecutor for at least two years, and a minimum age of 26. Within the exercise of their office, judges are independent, being solely subject to the Constitution and statutes. At the same time, a judge may not belong to a political party, a trade union, or engage in public activities incompatible with the principles of independent courts and judges. In accordance with the Constitution and the statute on common law courts, a judge may not be removed from office. Recall of a judge from office, suspension from office, removal to another bench or position against his/her will may only occur by virtue of a court judgement and only in cases prescribed by statute. A judge retires at the age of 65, unless the National Council of the Judiciary allows him/her to continue in office, but only until the age of 70. A judge may be retired due to illness or infirmity of a kind that prevents him from discharging his/her duties. A judge may neither be held criminally responsible nor deprived of liberty without prior consent of a disciplinary court. Likewise, he/she may not be either detained or arrested except when apprehended in the commission of an offence and when detention is necessary to ensure the proper course of proceedings. The President of the relevant local court must be notified forthwith of any such detention, and she/he may order an immediate release of the judge. The exact procedures applying to those situations are laid down in the statute on common law courts.

43. The independence of law courts and judges is safeguarded by the National Council of the Judiciary, a collective body vested with the right to submit to the Constitutional Tribunal questions of the constitutionality of normative acts that bear on the independence of courts and judges.

44. Article 182 of the Constitution spells out a further fundamental principle: the participation of the citizenry in the administration of justice. Accordingly, cases in the common law courts are heard in the presence of lay assessors; exceptions to this rule are specified by statute.

Common law courts

45. Cases reserved to the competence of common law courts are heard before regional courts. Appeals against judgements passed by the regional courts are examined by provincial courts, which also hear in the first instance cases reserved for them by statute. Courts of appeal examine appeals against sentences passed by provincial courts of first instance.

Military Courts

46. Military courts administer justice within the armed forces of the Republic, in penal cases, as well as in other cases, reserved for them by statute. The lower military courts are called garrison courts and the higher ones are district courts. Their modes of action are laid down in the statute on military courts.

The Supreme Court

47. As provided by article 183 of the Constitution, the Supreme Court is the highest judicial organ, and also supervises the common law courts and the military courts in their adjudication. Specifically, among its competencies are: the review of cassations, or appeals against final sentences passed by courts of second instance, or extraordinary appeals against a final sentence of an appeal court; review of extraordinary appeals against judgements of the Chief Administrative Court which glaringly contravene the law or run counter to a vested interest of the Republic; passing pronouncements designed to elucidate legal provisions that tend to raise doubt in their practical application, or whose application has led to discrepancies in the judicature; passing rulings designed to resolve legal issues that give rise to grave doubts; examination of other questions reserved for the Supreme Court by statute as, for instance, ascertaining the validity of general and local elections.

The Chief Administrative Court

48. The Chief Administrative Court administers justice by exercising supervision over the performance of the public administration and by examining complaints on: administrative decisions; rulings of organs of public authority; regulations (normative acts) adopted by local government bodies and resolutions of such bodies bearing on public issues; resolutions and normative acts adopted by territorial organs of government administration; the inaction of administrative organs. The modes of action of the Court are laid down in the Statute on the Chief Administrative Court.

The Constitutional Tribunal

49. The Constitutional Tribunal is an organ of the judiciary empowered to examine: the constitutionality of normative acts (laws) and of international agreements; the conformity of statutes to those international agreements whose ratification required prior consent granted by statute; the conformity of legal provisions issued by central State organs with the Constitution, ratified international agreements, and statutes; complaints against constitutional infringements; the constitutionality of the objectives and activities of political parties; questions submitted by law courts concerning the constitutionality of normative acts (statutes); other issues as specified in the Statute on the Constitutional Tribunal.

The State Tribunal

50. The State Tribunal passes judgements on the responsibility of persons holding the highest posts in the State for infringements of the Constitution or binding laws, committed within their office or within its scope (articles 198-201 of the Constitution). The Tribunal's modes of operation are detailed in the Statute on the State Tribunal.

Prosecutors

51. The Constitution does not rule on either the organization or the responsibilities of prosecutors who protect law and order and supervise the prosecution of criminals. The relevant provisions are contained in the Law on Prosecutors of 20 June 1985, amended in 1996.

52. The Prosecution comprises the office of the Prosecutor General as the supreme organ as well as lower-level public and military prosecutors. The post of Prosecutor General is held by the Minister of Justice. The organizational units of the public prosecution are: the National Prosecutor's Office, which forms a component part of the Ministry of Justice, the appeal prosecutions, and provincial and regional prosecutions. The prosecutor is independent in exercising his/her office, but is obliged to follow the regulations, orders and instructions of his superiors, with the provisos mentioned in article 8 of the Law on Prosecutors.

53. The position of the prosecutor in judicial proceedings follows from the principle of independence of other State organs and from his/her subordination to no one else but his/her superiors. Within the prosecution, the prosecutor functions in a hierarchy, which obliges him/her to follow the orders of his/her superior(s). The latter principle does not clash with the principle of independence as long as the prosecutor exercises his/her functions in the statutory framework insofar as she/he is free to take any action deemed necessary, being responsible for the adequacy and timeliness of such action.

54. Prosecutors are appointed (and recalled) by the Prosecutor General. To be appointed a prosecutor, the candidate must: hold Polish citizenship and enjoy all civil and citizen's rights; have: an unblemished reputation, a degree in Law, completed an apprenticeship in a court or prosecutor's office, passed an examination for judge or prosecutor, been employed as associate prosecutor or judge for at least one year; be 26 or over.

V. FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. The Commissioner for Protection of Civil Rights

55. The Commissioner for the Protection of Civil Rights (Ombudsman) is sovereign and independent of any other State body and is appointed by the Sejm with the Senate's approval for a five-year term. The Commissioner safeguards the human and civil rights and liberties as set forth in the Constitution and other regulations. Anyone under the authority of the Polish State is entitled to apply to the Commissioner for assistance in protecting his/her liberties or rights infringed by public administration bodies. Petitions submitted to the Commissioner are free of any charges and need not comply with any specific form. The Commissioner may also take action at his own initiative.

56. The Commissioner for the Protection of Civil Rights may:

- refer to the agency, organization or institution whose activity has been found to have caused infringement of human or civil rights or liberties, presenting in his motion opinions and conclusions as to how the case could be settled, and may demand that disciplinary proceedings be instituted or official sanctions be imposed under prevailing law;

- approach the relevant agencies with proposals for legislative initiative or for the issue or amendment of other legal acts concerning civil rights and liberties;

- file a cassation appeal in a criminal case with the Supreme Court against the legally valid judgement which terminates legal proceedings;

- file an extraordinary appeal with the Supreme Court against a judgement of the High Administrative Court;

- apply to the Constitutional Tribunal to verify the conformity of laws with the Constitution and ratified international agreements, conformity of regulations issued by central State bodies with superior normative acts, especially the Constitution, and apply to the High Administrative Court to verify the conformity of local law with such provisions;

- demand that civil or administrative proceedings be instituted on behalf of the citizen and take part in such proceedings, file a complaint with the High Administrative Court, move for punishment for an offence, and request the prosecutor to institute preparatory proceedings in cases involving offences prosecuted ex officio.

57. The Commissioner for the Protection of Civil Rights provides the Sejm and the Senate with information about his/her activities and the status of compliance with human and civil rights and liberties on an annual basis; such information is published.

58. In the period between May 1997 and May 1998, the Commissioner received 31,282 new petitions, and the total number of all letters addressed to the Commissioner was 47,410. Complaints concerning social security and welfare, tax and housing issues prevailed.

59. In 1989, the totalitarian structures in Poland started to be replaced by basic institutions of democratic order. Solidarity won the elections and participated in the creation of the Government. The operation of political parties, free trade unions and non-governmental organizations was legalized. This boosted social confidence in the system of government, increased social participation in governance, and consequently facilitated indispensable transformation of the economy. The major regulators of social life were changed. This meant a qualitative change in people's everyday experience in their roles as citizens, employees and consumers. For ordinary people, these changes were often difficult, as economic transformation was followed by a recession and mass unemployment.

60. The political institutions established at the beginning of the decade (free elections and media, independent political parties and non-governmental organizations, free trade unions) created a mechanism which allows the restoration of social confidence in the authorities. The new political system also included legal and political mechanisms that regulate social participation, shaping the level and forms of social activity.

61. The restoration of a democratic system of government in Poland after 1989 started the construction of the foundations of a law-abiding State, in which a nascent civil society began organizing itself, whilst enjoying developed guarantees of human rights. That change resulted in the rejection of the primacy of collective rights over individual ones and of economic, social and cultural rights over personal and political ones. It also produced a shift in emphasis from the promotion of human rights to their actual protection.

62. A new legal system was built in Poland over a period of eight years. A number of new laws have provided people with legal guarantees of the right to active participation in public life and protection of their rights and freedoms. The new Constitution was adopted in 1997.

B. The Constitution and status of international agreements in Polish law

63. The Polish Constitution of 2 April 1997 (Journal of Laws, No. 78, Item 483) protects fundamental human and civil rights. Chapter II, entitled "The Freedoms, Rights and Obligations of Persons and Citizens", enumerates the individual, political, economic, social and cultural freedoms and rights, and specifies the measures needed for their protection. The new Constitution guarantees such human rights as freedom to hold and participate in peaceful assemblies, freedom of association, including association in trade unions, socio-professional farmers' organizations and employers' organizations, and right of involvement in public affairs and to petition, complain and submit suggestions to organs of public authority. The Constitution also provides for economic, social and cultural rights and freedoms, namely: right of ownership, freedom to pursue an occupation of one's choice, freedom to choose

one's workplace, right to safe and sanitary working conditions, to social security, health care, education, the right of families to have their interests taken into account in the State's social and economic policies, protection of the rights of the child, freedom of artistic creativity, environmental security, policies conducive to the satisfaction of the citizens' housing needs, protection of consumers, users and tenants.

64. A new element in Polish constitutional practice is the introduction to the present Constitution of provisions which specify the means ensuring the right of defending freedoms and civil rights. These are:

- compensation to anyone harmed by an action of an organ of public authority in breach of law;

- establishing the principle that laws may not bar the recourse to court by any person in pursuit of claims alleging infringement of freedoms or rights;

- ensuring the right to appeal against judgements and decisions by courts of first instance;

- ensuring the right to those whose constitutional freedoms or rights have been infringed to appeal to the Constitutional Tribunal to rule on the conformity with the Constitution of a law or other normative act upon whose basis a court or organ of public administration has made a final decision on their freedoms, rights or obligations specified in the Constitution;

- giving everyone the right to apply to the Commissioner for the Protection of Civil Rights for assistance in protection of their freedoms' or rights infringed by organs of public authority;

- matters regulated by law or those in respect of which the Constitution requires legislative form.

65. Chapter III of the Constitution defines the sources of law as being: the Constitution, laws, ratified international agreements, and regulations (ordinances). The provisions of the Constitution apply directly, unless the Constitution provides otherwise. To be valid in Poland, any enactment of law must conform to the Constitution. The conformity of statutes and international agreements with the Constitution, and the conformity of laws with international agreements, the ratification of which requires prior consent granted by law, is adjudicated by the Constitutional Tribunal, in ways laid down in the statute of 1 August 1997.

66. A significant modification in Polish law was introduced in article 91 of the Constitution, which stated that a ratified international agreement, once it is published in the Journal of Laws, constitutes part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a law. An international agreement ratified upon prior consent granted by law takes precedence over laws if such an agreement cannot be reconciled with the provisions of such laws. The ratification of an

international agreement that deals with freedoms, rights or obligations of citizens as specified in the Constitution requires prior consent granted by law.

C. Means for the protection of rights and freedoms

67. The Polish system of law has developed a variety of instruments that serve to protect human rights and freedoms. The foundations are provided in the Polish Constitution, where the various protective devices are enshrined in the relevant constitutional framework.

68. Article 37 proclaims that any person living under the authority of the Polish State may enjoy the freedoms and rights enshrined in the Constitution, while any exceptions to this rule, in the case of foreigners, must be specified by law. Some such exemptions are spelled out in: the law on foreigners, which applies to taking up residence, temporal limitations on sojourn, and admissibility of expulsion; the law on purchase of immovables (realty) of 24 March 1920, which requires foreigners to obtain a licence from the Minister of the Interior; and in the law on combating unemployment of 14 December 1994, which requires the consent of the head of the provincial labour exchange to the employment of a foreigner.

69. Article 77 gives everyone the right to compensation for any harm done by an organ of public authority in contravention of the law. Furthermore, laws may not bar the recourse of any person to the courts in pursuit of claims alleging infringement of freedoms or rights. This regulation ensues from the principle that a public authority must strictly adhere to the law. In the following article (78), the Constitution guarantees the right to appeal against judgements and decisions passed at first instance, in ways laid down by law (the codes of penal, civil, or administrative proceedings).

70. Worth mentioning at this point is the responsibility of the Treasury for losses inflicted by the actions of public functionaries (whether civil servants or managers of State enterprises) or of persons acting under orders of this kind, and also of elected officials, judges, public prosecutors, and members of the armed forces. A recent innovation is the right of anyone who maintains that his/her constitutional rights or freedoms have been violated to lodge a complaint with the Constitutional Tribunal on the (lack of) conformity with the Constitution of a law or any other normative act that has served a court or organ of public authority as the basis of a final verdict or decision affecting any freedoms, rights, or duties specified in the Constitution. If the Constitution or any law is infringed by a functionary of a supreme organ of public authority acting in his/her official capacity, such a case may be put to the State Tribunal under the law of 26 March 1992. By the same token, any citizen who believes that his/her freedoms or rights have been infringed by an organ of public authority may ask the Ombudsman to examine his/her case, according to the law of 15 July 1987.

71. As stipulated by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which Poland is a party, any person whose rights have been violated may appeal to the European Court of Human Rights in Strasbourg. As a contracting party to the Optional Protocol to the International Covenant on Civil and Political Rights, Poland has likewise

acknowledged the competence of the United Nations Human Rights Committee to receive and examine individual complaints; the same applies to the United Nations Committee against Torture. Work is currently proceeding for Poland to recognize the authority of the United Nations Committee on the Elimination of Racial Discrimination.

D. Codification of the criminal law

72. The new Criminal Code of 6 June 1997, which went into effect in 1998, explicitly defines the requirements necessary for the prosecution of criminals and the related punishment to be inflicted, with due consideration for humanitarian principles and respect for human dignity. Above all, the new Code has abolished the death penalty as a punitive measure. Life imprisonment will be the most severe punishment for perpetrators of the gravest offences.

73. The new Criminal Code penalizes to a greater extent various forms of abuse of persons deprived of their liberty. For instance, it provides that a public officer who resorts to violence, illegal threats, or otherwise physically or mentally abuses a person in order to extract from him/her certain testimony or clarifications will be subject to prosecution. The adoption of this new provision is a fulfilment of a convention-derived obligation concerning the punishability of torture.

74. Under the Law of 29 June 1995 on the Amendment of the Code of Criminal Procedure, decisions concerning detention on remand have been transferred to the exclusive competence of courts. This provision has been in force since 1 August 1996. Under the same law, a new appellate measure - cassation - has been introduced to replace extraordinary appeal. Besides appeal, cassation is the other possibility of appealing a sentence to a higher court. Thus, the administrative factor in the filing of an extraordinary appeal has been eliminated.

75. The new Code of Criminal Procedure considerably enhances the rights of suspects (defendants):

- detainees have been granted the right to immediately contact their counsel and to file a complaint with a court about any form of detention;

- the maximum period of detention on remand has been determined, and the provision of the sole competence of the court in ordering this measure has been reaffirmed;

- courts have been granted the right to review the ordering of other preventive measures by public prosecutors;

- the principle has been adopted that clarifications, testimonies or statements are not acceptable as evidence not only in cases where they have been given under conditions excluding freedom of speech, but also if they have been obtained in contravention of a ban on influencing an interrogated person by coercion or illegal threat;

- tapping of telephone conversations has been restricted to cases related to particularly grave offences, which are exhaustively listed, with the reservation that tapping may be executed solely under a court ruling and only after criminal proceedings have been instituted.

76. The amended Code of Penal Execution emphasizes in particular a convict's rights and obligations, providing appropriate legal guarantees in executory proceedings. These guarantees consist in granting the convict the right to:

- file a complaint to the competent court against any decision of non-governmental bodies implementing court rulings that he might deem illegal;

- send complaints to international institutions responsible for the defence of human rights;

- defence throughout the executive proceedings.

77. The guarantees of protection of personal interest have also been enhanced recently. In case of infringement of personal interest involving material loss, the victims have been granted the right to claim compensation.

78. The scope of court jurisdiction has been broadened by providing the possibility of appealing to the High Administrative Court against each administrative decision and each ruling issued in the course of administrative proceedings and decisive for matters of substance.

VI. HUMAN RIGHTS UNDER THE POLISH CONSTITUTION

A. International conventions on human rights

79. The Republic of Poland is a party to the major international human rights agreements, those originating in the United Nations framework as well as those created in the European framework. Poland has ratified, among others, the following agreements:

International Covenant on Civil and Political Rights (Polish Journal of Laws, 1977, No. 38, Item 167) with its Optional Protocol (J. of Laws, 1994, No. 23, Item 80);

International Covenant on Economic, Social and Cultural Rights, (J. of Laws, 1977, No. 38, Item 169);

Convention on the Elimination of All Forms of Discrimination against Women, New York (J. of Laws, 1982, No. 10, Item 71);

International Convention on the Elimination of All Forms of Racial Discrimination (J. of Laws, 1969, No. 25, Item 187);

Convention on the Rights of the Child (J. of Laws, 1991, No. 120, Item 526);

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (J. of Laws, 1989, No. 63, Item 378);

European Convention for the Protection of Human Rights and Fundamental Freedoms (J. of Laws, 1993, No. 61, Item 284) and its protocols: No. 1 (J. of Laws, 1995, No. 36, Item 175), No. 2 (J. of Laws, 1995, No. 36, Item 176), No. 4 (J. of Laws, 1995, No. 36, Item 175), No. 9 (J. of Laws, 1995, No. 36, Item 177), and No. 11 (J. of Laws, 1998, No. 147, Item 962).

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (J. of Laws, 1995, No. 46, Item 238).

The stipulations of those international agreements are fully reflected by the Polish Constitution, Polish law and other legal documents in force in Poland. The pertinent regulations are discussed below in their respective contexts.

B. Specific human rights and freedoms

1. General principles

80. The fundamental principles of personal freedoms and rights, specified in the section "General Principles" of chapter II, follow closely the regulations adopted in the European Convention on Human Rights and in the International Covenant on Economic, Social and Cultural Rights.

(a) Human dignity

81. Article 30 defines human dignity as the origin and substantiation of the entire catalogue of rights and freedoms. Human dignity is considered inviolable, and public authorities are obliged to respect and protect it. As a consequence, respect for human dignity and observance of human rights have been entered in the statutes of the Police, the State Protection Bureau (UOP) and the Border Guards, and any citizen is entitled to complain to the respective prosecutor's office on the proceedings of the Police or the UOP.

(b) Freedoms

82. Article 31 of the Constitution ensures that personal freedoms are duly respected: being under the protection of the law, personal freedoms must be respected by everyone, and no one may be coerced to do anything not required by law. Any limitation on the exercise of constitutional freedoms and rights may be imposed only by law, and only when necessary in a democratic State to protect its security or public order, or to protect the natural environment, health or public morals, or the freedoms or rights of others, provided such limitations do not violate the essence of freedoms and rights. The details of the regulations in the various spheres are further discussed below.

(c) Equality before the law

83. The principle of equality before the law, the right to equal treatment by public authorities, and the rejection of discrimination in political, social or economic life are spelled out in article 32 of the Constitution. The following article ensures men and women equal rights in family, political, social and political life, as well as equal rights to education, employment, promotion, to equal remuneration for work of similar value, to social

security, to hold public office, and to receive public honours and decorations. Poland is a party to international agreements which postulate the equality of women and men, the most important of them being: the Convention on the Political Rights of Women, the Convention on the Elimination of All Forms of Discrimination Against Women and ILO Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

(d) The right to citizenship

84. A further fundamental human right is guaranteed in article 34 of the Constitution: the right to citizenship. Polish citizenship is acquired by birth to parents being Polish citizens. Alternative ways of acquiring Polish citizenship (by repatriates, foreigners and stateless individuals) are specified in the Law on Polish Citizenship. A Polish citizen shall not lose his/her citizenship except by renunciation thereof.

(e) The rights and freedoms of ethnic minorities

85. Article 35 ensures Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain their customs and traditions, and to develop their own culture. Similarly, they have the right to establish their own educational and cultural institutions, or institutions designed to protect their religious identity, and to participate in the resolution of matters bearing on their cultural identity. Poland is a party to the International Convention on the Elimination of All Forms of Racial Discrimination. Poland has also signed bilateral treaties of friendship and good-neighbourly relations with Lithuania, Belarus, Ukraine, Germany, the Czech Republic and Slovakia, which oblige the signatories to protect the rights of ethnic minorities.

86. To protect the political rights of the ethnic minorities, the (general) electoral law of 28 May 1993 stipulates that the 5 per cent vote threshold may be waived in the case of registered candidates of ethnic minorities, providing that those interested submit statements to that effect.

87. Equal rights are ensured to all Churches and other religious organizations, and so is the State's impartiality in matters of personal conviction, whether religious or philosophic, thus ensuring freedom of their expression in public life (article 25 of the Constitution). Relations between the State and Churches as well as religious organizations and communities are governed by statutes that respect the autonomy and mutual independence of each in its own sphere. The relations between the Republic of Poland and the Roman Catholic Church are laid down in the Concordat, i.e. the international agreement between Poland and the Vatican, and in the Law on State-Church relations. Relations with the other Churches and religious organizations are regulated by laws resulting from agreements signed by the Council of Ministers with individual denominations. For example, there are separate laws governing relations between the State and the Jewish Religious Congregations, the Lutheran (Evangelical-Augsburg) Church and the Muslim Religious Union.

88. The old Penal Code provided for penalties for publicly insulting, humiliating, or degrading a person, or curtailing a citizen's rights, on

account of his/her religion or irreligiousness, as well as for forcing a person to engage in religious activity or to take part in religious ceremonies, or for preventing a person from doing the same, and for hurting a person's religious feelings. The new Penal Code (passed on 6 June 1997) (J. of Laws, No. 88, Item 553), in force since 1 September 1998, extends this protection by defining public insult or battery (infringement of corporal inviolability) because of a person's national, ethnic, racial, religious or irreligious identity. Similarly, the law prohibits incitement to hatred on account of someone's racial, national, ethnic, religious or irreligious identity. Furthermore, the same Code imposes penalties for actions aimed at the extermination, in part or wholly, of a national, ethnic, racial, political, religious, or specifically oriented group, or for imposing on such a group conditions of life that could lead to its biological extermination, or for employing measures intended to impair births within such a group, or for bereaving such a group of their children; measures taken in preparation of such criminal acts are likewise punishable. Moreover, the new Code classifies as criminal the use of force or unlawful threats in relation to a group of people or to individuals on account of their national, ethnic, racial, political, religious or irreligious orientation; similarly, sanctions are envisaged for public incitement to such deeds.

2. Personal freedoms and rights

(a) Protection of human life

89. The catalogue of personal freedoms and rights guaranteed by the Polish Constitution begins with the fundamental human right to the protection of life. The new Penal Code has abolished the death penalty. Under article 14 of the Code, all death sentences passed so far have been commuted to life imprisonment. A further consequence of the view that life is a supreme human value is contained in the provision of the statute of 7 January 1993 on family planning, the protection of the human foetus, and restrictions on the admissibility of abortion which penalizes actions designed to put a conceived child (i.e. foetus) to death (while listing those situations which justify abortion), as well as actions designed to make a pregnant woman put her conceived child to death. Under the new penal law, termination of pregnancy in violation of the law is punishable by up to three years in prison.

(b) Prohibition of scientific experiments on humans

90. Article 39 of the Constitution prohibits submitting human beings to scientific experiments without their express consent. The required consent must be granted voluntarily. The conditions under which medical experiments may be conducted are specified in the Law of 5 December 1996 on the Medical Profession. The new Penal Code prohibits cognitive experiments on persons protected by international humanitarian law even with their consent. The new Penal Code has reiterated the obligation of obtaining the consent of a participant in a research experiment after suitably informing him/her of the anticipated benefits as well as the negative consequences and the probability of their occurrence and instructing him/her of the option of withdrawing from the experiment at any stage. Sanctions have been introduced against subjecting individuals under the protection of international humanitarian law to research experiments even with their consent.

(c) Prohibition of torture

91. Article 40 prohibits torture or cruel, inhuman or degrading treatment or punishment as well as corporal punishment. Under the new Polish Penal Code, infliction of torture is a crime as specified by international law No. 378 and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

92. The Polish system of penal law contains regulations guaranteeing the prosecution of acts which constitute torture in the eyes of the Constitution. The new Penal Code has formulated as violations of international law crimes against prisoners of war. the wounded, the sick, the shipwrecked, medical personnel, clergymen, the civilian population of areas that have been occupied, are controlled or are the scene of armed hostilities, people who have laid down their weapons or, lacking means of defence, have surrendered, as well as those benefiting from international protection during armed operations. It is a crime to seriously damage the health of such individuals, subject them to torture, cruel or inhuman treatment, carry out research experiments on them even with their consent, or use them to shield an area or object against military attacks. A catalogue of legal measures designed to prevent acts of inhuman treatment has also been created. They include supervision of incarceration.

93. Legal acts governing the Police, the Office of State Protection and the Border Guards penalize officers of those services who violate the rights of citizens by overstepping their competence during the exercise of official duties, failing to fulfil their duties, using violence, illicit threats or physically abusing a person to extract a confession, clarification or statement. The Penal Code declares legally punishable the threat of violence and deception in order to exert pressure on a witness as well as the actual physical coercion of a witness.

94. Poland is also a party to international treaties opposed to all acts of torture: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

(d) The right to inviolability of the person

95. In subsequent articles, the Constitution affirms the right to inviolability of the person and personal freedom. Article 41, paragraph 1, states that the deprivation or restriction of freedom is permissible only in accordance with the principles and in the manner stipulated by law. The respective regulations are contained in the Code of Penal Proceedings (CPP), the Law on Foreigners, the Law on Combating Infectious Diseases and the Law on Sobriety.

96. Paragraph 2 of the same article ensures a person deprived of liberty (detained) without trial the right to a judicial examination of the legality of said detention. Any detention must be made immediately known to the family of, or to a person indicated by, the detained person. Among other personal freedoms and rights, the Constitution also lists the right of a detained person to be informed immediately, in a comprehensible manner, of the reasons

for such detention. The same article specifies that the detained person must be given over to a court within 48 hours of detention. The detainee is to be set free unless a warrant of temporary arrest issued by a court, along with specification of the charges laid, has been served on him/her within 24 hours of being put at the court's disposal. In other words, the Constitution allows the court 24 hours for issuing the warrant.

97. The new CPP has greatly extended the procedural rights of detainees. Above all, complaints over detention may not only question the validity and legality of the detention and demand immediate release, but may also be aimed at making the court rule on the improper application of this measure.

98. Rather important for the protection of personal freedoms is a new provision, which ensures the right of the detainee to immediately contact and meet a lawyer. In the case of a foreign citizen, the detainee must be allowed to contact the relevant consular office or diplomatic mission.

99. The new codes maintain the maximum duration of detention without warrant (48 hours), counting from the moment of actual detention to the moment when the detainee is given over to the court, with a justification for the request to order his/her temporary arrest. They also require the release of the detainee unless he/she has been served an arrest warrant within 24 hours after being given over to the court. The new CPP has retained the provision that only the court may rule on a temporary arrest, also maintaining the limits on the duration of arrest. All this is rounded out by the constitutional provision that grants the right to compensation for anyone deprived of liberty in violation of the law.

(e) The right to a fair trial

100. Some more fundamental rules are spelled out in article 42, where the principle nullum crimen sine lege (presumption of innocence, or the right to defence) is given force. According to the Constitution and the relevant provisions of article 1 of the Penal Code, only a person who has committed an act prohibited by a law in force at the moment of commission, and which is subject to a penalty, shall be held responsible before the law. At the same time, anyone against whom criminal proceedings have been brought has the right to defence at all stages of such proceedings. In particular, the defendant may hire counsel or take advantage of counsel appointed by the court, if there is evidence that hiring counsel would be beyond his/her means. The court appoints counsel ex officio in the case of a deaf, mute, or blind defendant, or when the defendant shows signs of insanity. The new CPP in addition has made representation by counsel obligatory in a criminal case against a minor and anyone who does not speak the language (Polish), or if the court finds it necessary because of circumstances which jeopardize an effective defence.

101. The principle of presumed innocence, under which the defendant is considered innocent as long as his/her guilt has not been established by a legally valid verdict, was reflected in CPP article 3. The new CPP strictly follows the constitutional provision. Any reasonable doubts must be interpreted in favour of the defendant.

102. A fundamental provision concerning war crimes and crimes against humanity is contained in article 43 of the Constitution, which proclaims the non-applicability of statutory limitations to such crimes. The same is stated in article 109 of the Penal Code. In fact, the statute of limitation was lifted in Poland on 22 April 1964 in relation to the perpetrators of the most heinous Nazi crimes of the Second World War. Subsequently, the statute of 6 April 1984 on the Main Commission for the Investigation of Crimes against the Polish People has lifted the applicability of statutory limitations to Nazi, Stalinist, and other crimes against humanity that constituted war crimes or crimes against humanity under international law. Moreover, article 44 of the Constitution states that the statute of limitation regarding actions connected with offences committed by, or by order of, public officials and which have not been prosecuted for political reasons, shall be extended for the period during which such reasons existed.

103. Article 45 of the Constitution proclaims another fundamental judicial right, namely, the right to a fair and public hearing of the case, without undue delay, before a competent, impartial and independent court. The principle of independence of the judiciary is further safeguarded by the Constitution: article 173 ff. affirms that courts and tribunals constitute a separate authority and are independent of other organs of power, and that judges, within the exercise of their office, are independent and subject only to the Constitution and the law. A fair and public trial is guaranteed by the rule of two-stage court proceedings (art. 176) and by the right to lodge constitutional complaints with the Constitutional Tribunal concerning conformity with the Constitution of laws and other normative acts that have served a court or another such organ to pass final judgement on the civil liberties or duties of citizens. The public nature of judicial proceedings may be restricted or wholly suspended only on the basis of a law, in cases specified in the Constitution (art. 45, para. 2), for reasons of morality, State security, public order, or protection of the privacy of a party or other important private interests; nevertheless, judgements must be announced publicly in any case. When it comes to the rule that court proceedings must be held without undue delay, in administrative matters a party may lodge a complaint on the inaction of an organ, to be examined by the Chief Administrative Court. The new CCP says, in article 2, that pronouncing judgement within a reasonable time span is one of the objectives of criminal proceedings. Article 306, paragraph 3, grants the right to complain if an earlier complaint has not resulted, in the course of six weeks, in either the initiation of proceedings or a refusal thereof. Article 6 of the Civil Code, in turn, states that the court ought to counteract any protraction of proceedings and should seek to judge the case during the first sitting as long as this is reconcilable with the exercise of justice.

(f) The right to privacy

104. Further constitutional norms are the right to personal privacy, the privacy of communication and inviolability of the home. The legal protection of private and family life, of a person's honour and good reputation, and of the freedom of decisions concerning one's private life (art. 47) is reflected in the provisions of the Civil Code. They guarantee protection of such personal values as health, freedom of conviction, name or pseudonym, one's likeness, privacy of communication, inviolability of the home, and scientific,

artistic, inventive and innovative activities, insofar as the person concerned is entitled to demand that an unlawful action be discontinued, that the consequences of such action be made good for, that due indemnities be paid, and any loss in property be compensated. The freedom and privacy of communication (art. 49) are additionally safeguarded by penal provisions which prescribe sanctions for unlawful infringement, concealment and damage of correspondence, for tapping a communication line and for passing on the information obtained in that way. Those rights can be curtailed only by law, as specified in the Penal Code, in the Police Law, in the UOP Law, in the Border Guard Law, and in the Code of Penal Execution.

105. The question of inviolability of the home (article 50 of the Constitution) is further expanded in the Penal Code, which penalizes infringements of domestic peace. Any search of the home, premises or vehicles may be imposed only in cases and in a manner specified by law.

106. The citizen's right to withhold personal data, and the resultant ban on obtaining, collecting, and accessing information other than that indispensable in a democratic country, as well as the right to restrict access to information about oneself, and the right to demand that false, incomplete, or unlawfully obtained information be corrected or deleted (art. 50) are laid down in considerable detail in the Law of 29 August 1997 on the Protection of Personal Data. Organs of the State are entitled to collect and store certain types of data on citizens on the strength of the Border Guard Law, the UOP Law and the Police Law.

(g) Freedom of speech

107. Article 54 of the Constitution grants everyone the right to express opinions and to acquire and disseminate information, while banning preventive censorship in the mass media and any licensing of the press. The licensing of radio and television stations is regulated in the statute on radio and television broadcasters. The latter statute as well as the Press Law both adhere to the principle of freedom of the mass media.

(h) The right to rear children in the family

108. The right of parents to rear their children in accordance with their convictions, with due respect for the degree of maturity of the child and his/her freedom of conscience, religion and conviction, is guaranteed in article 48 of the Constitution. Under article 53, paragraph 3, parents have the right to ensure their children a moral and religious upbringing and teaching, in accordance with their convictions. The question is further developed in the Family and Guardianship Code of which article 95 states that parents must exercise their authority over the child in the best interest of the child as well as in the social interest. Parental rights may be restricted or suspended only in instances specified by law: parental rights can be suspended when their exercise is infringed by temporary obstacles; complete withdrawal of parental rights may ensue when parents abuse their authority over the child or flagrantly neglect their duties to the child. Under article 41 of the old Penal Code, a court may deprive a defendant of parental rights, as an additional penalty, if he or she is found to have done harm to a minor, or to have acted in collusion with a minor, or to have acted

in a scandalizing manner, thus setting a bad example for the minor. The new Penal Code has abolished the court's prerogative to deprive the defendant of his/her parental rights, replacing this by the provision that crimes committed to the detriment of a minor, or in collusion with a minor, shall be dealt with by a juvenile court.

109. Poland is party to the Convention on the Rights of the Child.

(i) Freedom of movement and stay

110. The principle of freedom of movement within the territory of Poland as well as freedom to take up residence anywhere in Poland, or leave the country, is spelled out in article 52 of the Constitution. Limitations on those freedoms, provided for by law, are elaborated in: (i) the Code of Penal Proceedings, where two kinds of limitations are envisaged: police surveillance and preventing the person from leaving the country (possibly coupled with confiscation of passport); (ii) the Law on Contagious Diseases; and (iii) the Law on Foreigners, which states that a foreign citizen must obtain a permit to live or take up temporary residence in Poland. As stipulated in the Law on Passports, a Polish citizen cannot be refused a document that would allow him/her to leave the country and to stay abroad. At the same time, the Constitution states that a Polish citizen may not be expelled from the country, nor forbidden to return to it (art. 52, para. 4).

111. Similar rules apply to the extradition of Polish citizens. Article 55 states: "The extradition of a Polish citizen is forbidden."

(j) Freedom of conscience and religion

112. Another fundamental right ensured by the Constitution (art. 53) is the freedom of conscience and religion, which comprises freedom of religion and freedom to accept a religion by personal choice and to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. The religion of a Church or any other legally recognized religious organization may be taught in schools. At the same time, it is affirmed that no one may be compelled to participate, or not participate, in religious practices, or to disclose his/her philosophy of life, religious convictions or faith. The principles expounded in the quoted article are reflected in the Law on Safeguarding the Freedom of Faith and Religion and in the Law on Education and in the ordinance of the Minister of Education concerning the conditions and manner in which religion shall be taught in public schools.

3. Political rights and freedoms

(a) Freedom of assembly

113. Freedom of assembly, consisting in the freedom to organize peaceful assemblies and participating in such assemblies, is spelled out in article 57 of the Constitution. The detailed provisions on how such assemblies may be organized are contained in the Law on Assemblies, which also specifies, in

accordance with the Constitution, the restrictions that may be imposed in the interest of State security, public order and the protection of health, public morals, or other people's rights and freedoms.

(b) Freedom of association

114. A further basic principle expounded in the Constitution is the freedom of association. The relevant norms are contained in articles 58 and 59, but they ought to be considered in the framework created by articles 11 and 12. Those regulations safeguard the free formation and functioning of political parties, trade unions, socio-occupational organizations of farmers, societies, citizens' movements, and other voluntary associations and foundations. At the same time, the Constitution states that political parties shall be founded on the principles of voluntariness and the equality of Polish citizens, and their purpose shall be to influence the formulation of State policy by democratic means. Article 13 of the Constitution bans political parties and other organizations whose programmes are based upon totalitarian methods and the modes of activity of Nazism, Fascism and Communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership.

115. Whereas freedom of association is guaranteed to everyone, associations whose purposes or activities are contrary to the Constitution or statutes are prohibited. Further restrictions, as envisaged in the Statute on Associations, may be imposed only in the interest of State security, public order, and the protection of health, public morals, or other people's rights and freedoms. A court may refuse to register or may ban an association. The freedom of association in trade unions, in socio-occupational organizations of farmers, and in employers' organizations is further elaborated in laws regulating: trade unions, trade unions of farmers, and employers' organizations. Furthermore, Poland is a signatory to the following ILO conventions that deal with those questions: the Right of Association (Agriculture) Convention (No. 11), the Freedom of Association and Protection of the Right to Organize Convention (No. 87), the Rural Workers' Organizations Convention (No. 141), and the Labour Relations (Public Service) Convention (No. 151).

116. In parallel, the Constitution ensures the right to bargain and the employees' right to stage strikes and other forms of protest. Poland is bound in this respect by the Right to Organize and Collective Bargaining Convention (No. 98), the Workers' Representatives Convention (No. 135) and the Tripartite Consultations (International Labour Standards) Convention (No. 144).

(c) The right to involvement in public affairs and to petition, complain and submit suggestions to organs of public authority

117. The right to get involved in public affairs makes up the next group of freedoms comprising: the right to vote in elections and referenda, the right to stand for election, the right to become a civil servant (which applies to all Polish citizens on the principle of equality), and the right to obtain information on the activities of public authorities and institutions. In article 61, the Constitution ensures every citizen the right to obtain

information, among others, on the work of organs of public authority and of all civil servants, on the activities of self-governing economic and professional organs, and of other elected persons and organs. The right to obtain information ensures access to documents and to sittings of elected organs of public authority (local government bodies), including the right to make sound and video recordings at such sittings. Under the Press Law the aforementioned organs are obliged to inform the media of their activities in ways spelled out elsewhere.

118. At the same time, Polish citizens have the right to submit petitions, proposals and complaints, in the public interest and their own, to organs of public authority as well as to organizations and civic institutions. The procedures for considering petitions, proposals and complaints are specified in the Code of Administrative Proceedings.

4. Economic, social and cultural rights and freedoms

(a) The right to ownership

119. A further fundamental right inscribed in the Constitution is the right to ownership, as well as other property rights, and the right of succession. All those rights are protected in equal measure. Restrictions thereupon may be imposed only by law. Cases of such restriction are enumerated in the new Penal Code.

(b) Freedom to choose and pursue one's occupation

120. The principle of free choice of one's occupation and place of employment, next to the free pursuit of one's chosen occupation, are spelled out in article 65, where it is also stated that an obligation to work may be imposed only by law. As specified in the Penal Code, a person sentenced to restriction of freedom may be obliged by the court to take up a specific job for a specified period. A similar obligation may be imposed under the Law on Counteracting Natural Disasters. In the same article, the Constitution bans permanent employment of children under 16. The specific conditions under which minors may be employed are spelled out in article 191 of the Labour Code and in the ordinance of the Minister of Labour and Social Policies on extraordinary employment of minors. In order to facilitate the implementation of the citizens' rights in the realm of employment, the Constitution spells out the ways and means of curbing unemployment. The detailed measures to this end are laid out in the law on employment and combating unemployment. Furthermore, Poland is a signatory to the Unemployment Convention (No. 2), the Constitution of the International Labour Organization, the Minimum Age (Industry) Convention (Revised) (No. 59), the Abolition of Forced Labour Convention (No. 105), and the Minimum Age Convention (No. 138).

(c) The right to decent working conditions

121. The right to safe and sanitary working conditions, to legally defined days free from work, to paid holidays, and to maximum permissible working hours of work is spelled out in article 66. Rules governing work safety and hygiene are laid down in chapter 10 of the Labour Code, where the employer is held responsible for observing the prescribed standards and where the relevant

rights of employees are specified. The new Penal Code envisages penal responsibility for glaring violations of work safety and health standards. The regulations on working time and paid holidays are laid down in chapters VI and VII of the Labour Code. Moreover, Poland is a party to the Protection of Wages Convention (No. 95).

(d) The right to social security

122. Article 67 of the Constitution guarantees the right to social security whenever an employee is incapacitated for work. The detailed regulations are contained in the following statutes: on the organization and financing of social insurance, on social insurance, on old-age pensions for workers and on employment and combating unemployment, and also in the Workers' Compensation (Accidents) Convention (No. 17), to which Poland is a signatory.

123. The new Penal Code penalizes as violations of the social security law the failure to submit the required data even with the consent of the interested party or submitting untrue data influencing the right to social security benefits.

(e) The right to health care

124. The right to health care (health protection) is guaranteed in article 68, which also spells out the principle of equal access to health-care services financed from public funds. Under the same article, the authorities are obliged to ensure that children, pregnant women, the disabled, and persons of advanced age receive special health care. The same principle is reflected in the Law on Health-Care Institutions. Further provisions on health care for the disabled are contained in article 69, which obliges the public authorities to provide them with subsistence and opportunities for adaptation to work and social communication. Those provisions are further elaborated in the statute on the occupational and social rehabilitation of the disabled, in the statute on social assistance, in the Sejm resolution of 1 August 1997 endorsing the Charter of Rights of the Disabled, and in article 14 of the Law on Transport, which specifies the relevant obligations of a carrier.

(f) The right to education

125. A further right guaranteed by the Constitution (in article 70) is the right to education. Under this right, education is offered in public schools without payment, access to education is universal and equal, there is a choice between public and non-public schools, and public funding is provided for educational institutions. Detailed regulations on education are laid out in the Law on Education and in the Law on Schools of Higher Education, which invests such schools with autonomy.

(g) The protection of the family

126. Under articles 71 and 72, the State is obliged to extend legal protection to the family and the child, and to assist a mother before and after childbirth. The laws on family planning, protection of the foetus (from the moment of conception), and the (non-)admissibility of abortion, as well as

the law on social assistance, along with the relevant executive regulations, prescribe the modes and forms of assisting women during pregnancy. Poland has also signed the Maternity Protection Convention (Revised) (No. 103).

127. In regard to the rights of the child, under Polish law, the good of the child is the decisive factor in all decisions (court judgements) concerning the child. Poland is a party to the Convention on the Rights of the Child.

VII. PROMOTION AND TEACHING OF HUMAN RIGHTS IN POLAND

128. There is no question that human rights tend to receive more and more attention in Poland, in terms of promotion as much as in terms of teaching. Several schools of higher learning offer regular courses in human rights. A number of books on human rights were published recently. The rulings of the Human Rights Committee and the European Court of Human Rights are publicized by specialist journals as well as general newspapers (notably the daily Rzeczpospolita). The Ministry of Justice organizes training sessions and the Supreme Court holds seminars on human rights. Intensive schooling is provided by the Organization of Defence Counsels, and also by "Iustitia", an association of judges. There are also a number of non-governmental organizations concerned with the issue of human rights, among them the Helsinki Human Rights Foundation, the League of Polish Women, the Independent Social Movement of Women, the Committee for the Protection of the Rights of the Child, the Polish UNICEF Committee, the Society of Friends of Children, and the Amnesty International Association.